



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1108]

RIN 1625-AA11, 1625-AA00

Safety Zone and Regulated Navigation Area; Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

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SUMMARY: The Coast Guard is issuing this Interim Rule to address two omissions from the regulatory text of the Safety zone and Regulated Navigation Area in the Chicago Sanitary and Ship Canal, Romeoville, IL. These omissions include requirements for the regulated navigation area that vessels must be greater than twenty feet in length and must not be a personal or human powered watercraft of any kind (e.g. jet skis, wave runners, kayaks, row boats, etc.).

This revision is intended to make the regulatory text consistent with the discussion of the rule as originally published in the Federal Register on December 12, 2011.

DATES: This rule will be enforced with actual notice from June 19, 2013, until [INSERT DATE OF PUBLICATION IN THE

FEDERAL REGISTER]. This rule is effective in the Code of Federal Regulations on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1108 and are available online by going to [www.regulations.gov](http://www.regulations.gov), inserting USCG-2011-1108 in the "SEARCH" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call CDR Scott Anderson, U.S. Coast Guard, Ninth District Prevention Department, Cleveland, OH, at (216) 902-6049 or email him at [scott.e.anderson@uscg.mil](mailto:scott.e.anderson@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

ACOE	U.S. Army Corps of Engineers
CSSC	Chicago Sanitary and Ship Canal
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
IR	Interim Rule
NPRM	Notice of Proposed Rulemaking
RNA	Regulated Navigation Area

#### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when the comment is successfully transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you

include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "OPEN DOCKET FOLDER" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation

West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the FR.

## B. Regulatory History and Information

Since 2005, the Coast Guard has established and enforced a series of safety zones and RNAs on the CSSC to address safety risks associated with the operation of the ACOE's electric dispersal fields. A summary of this regulatory history can be found in the background section

of the final rule establishing the current version of 33 CFR 165.923 (76 FR 77121). Notably, the Coast Guard published a temporary final rule with request for comments in the Federal Register on December 2, 2010 (75 FR 75145). This rule established RNA restrictions for the CSSC, which included requirements that (1) vessels must be greater than twenty feet in length and (2) must not be personal or human powered watercraft of any kind. Although these requirements were adopted and discussed in 76 FR 77121 (see Discussion of Rule), they were omitted from the regulatory text of 33 CFR 165.923. To correct this discrepancy and conform the regulation to established enforcement practice of the RNA, the Coast Guard is issuing this IR.

The Coast Guard is issuing this IR without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and is

unnecessary. The fish barrier remains active and publishing an NPRM and accepting comments prior to the issuance of an effective rule is impracticable because it inhibits the Coast Guard's ability to protect vessels less than 20 feet in length and personal watercrafts from harm. The electrified barriers pose a significant threat of harm to vessels less than 20 feet in length and personal watercrafts.

Additionally, the RNA restrictions that (1) vessels must be greater than twenty feet in length and (2) must not be personal or human powered watercraft of any kind were subject to a 30 day comment period in a temporary interim rule establishing the RNA for the CSSC (75 FR 75145), which published on December 2, 2010. The Coast Guard received no comments on portions relating to vessels less than 20 feet or personal watercrafts. Moreover, based on the Coast Guard's interpretation of that temporary interim rule, as discussed in its preamble, vessels less than 20 feet and personal watercraft are not allowed to travel through the barrier. Because the restriction on vessels less than 20 feet and personal watercraft has already been the subject public comment and the Coast Guard has interpreted the temporary interim rule published at 75 FR 75145 to exclude

these vessels, prior notice and comment for this interim rule is unnecessary.

Although the Coast Guard finds that good cause exists not to publish an NPRM, comments from the public as to the addition of this provision to the regulation text are welcomed. The Coast Guard will consider comments prior to the finalization of this rule. Such comments may be submitted by following the instruction in the Public Participation and Request for Comments section.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the same reasons discussed above about not publishing an NPRM, the Coast Guard finds that waiting for a 30 day notice period to run would be unnecessary, impracticable, and contrary to the public interest.

### C. Basis and Purpose

In response to the threat of Asian carp reaching the Great Lakes and devastating the Great Lakes commercial and sport fishing industries, the ACOE began in 2002 the operation of a series of electrical barriers in the CSSC. These barriers are located approximately 30 miles from Lake Michigan and create an electric field in the water by pulsing low voltage DC current through steel cables secured

to the bottom of the canal. Currently, three electrical barriers are in operation. These barriers are meant to prevent and reduce the dispersal of Asian carp in the CSSC.

The Coast Guard's Ninth District Commander has determined that the electric current radiated from the electric barriers poses certain safety risks to commercial vessels, recreational boaters, and people on or in portions of the CSSC in the vicinity of the barriers. Consequently, the Coast Guard's Ninth District Commander has concluded that an RNA is necessary to mitigate such risks.

In addition to safety concerns about electric current in the water, concerns have also been raised about the potential transport of carp eggs, gametes, and juvenile fish in bilge, ballast, or other non-potable water from south of the barriers to waters north of the barriers. To address these concerns, the Coast Guard's Ninth District Commander has determined that a safety zone is necessary to mitigate the threat of such transportation.

For a fuller discussion on the history of the electrical dispersal barriers and the potential transportation of eggs, gametes, and juvenile fish across the barriers see 70 FR 76694, 75 FR 754, and 75 FR 75145, which were published on December 28, 2005, January 6, 2010, and December 2, 2010 respectively.

To address the aforesaid safety risks, the Coast Guard's Ninth District Commander, as discussed in the Regulatory History and Information section, established a series of safety zones and RNAs from 2005 to 2010. Most recently, on December 1, 2011, the Coast Guard's Ninth District Commander established a permanent RNA on all waters located adjacent to, and over, the electrical dispersal barriers on the CSSC between mile marker 295.5 and mile marker 297.2 (76 FR 77121). In the same rule-making, the Coast Guard's Ninth District Commander also established a permanent safety zone over a smaller portion of the same waterway between mile marker 296.1 and mile marker 296.7. This rule-making represents the current version of 33 CFR 165.923.

#### D. Discussion of Rule

This IR only addresses two requirements in the RNA of 33 CFR 165.923, which although included in the Discussion of Rule of 76 FR 77121 were omitted from the regulatory text of 33 CFR 165.923. As previously noted, these requirements are that (1) vessels must be greater than twenty feet in length and (2) must not be a personal or human powered watercraft of any kind (*i.e.* jet skis, wave runners, kayaks, row boats, *etc.*). These requirements, as with all others included in the 33 CFR 165.923, are

necessary for safe navigation of the RNA and to ensure the safety of vessels and their personnel as well as the public in general. The requirements are also necessary to protect against the harms presented by a potential invasion of Asian carp in Lake Michigan.

Deviation from this final rule is prohibited unless specifically authorized by the Coast Guard's Ninth District Commander or his or her designated representatives. For the life of this RNA, the Coast Guard's Ninth District Commander designates as his or her representatives the Captain of the Port, Sector Lake Michigan, and the Commanding Officer, Marine Safety Unit Chicago.

The safety zone and RNA will be enforced at all times. If, however, enforcement of the safety zone or RNA is at any time suspended, the Coast Guard's Ninth District Commander or his or her designated representatives will cause notice of the suspension to be made by all appropriate means to effect the widest publicity among the affected segments of the public.

#### E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

## 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The two RNA restrictions are limited in scope to vessels under twenty feet in length and personal watercraft of any kind.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises

small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels under 20 feet and personal or human powered watercraft intending to transit the RNA during enforcement. This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: the RNA restrictions in this rule are limited in scope of vessels under 20 feet and personal or human powered watercraft.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If the rule would affect your small business, organization, or governmental jurisdiction and you have

questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that

Order and have determined that it does not have implications for federalism.

#### 6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 7. Taking of Private Property

This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 8. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## 9. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

## 10. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 11. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply,

distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## 12. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 13. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and

Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a regulated navigation area, and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165 — REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to

read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.923(b) to read as follows:

**§ 165.923 Safety Zone and Regulated Navigation Area,  
Chicago Sanitary and Ship Canal, Romeoville, IL.**

\* \* \* \* \*

(b) Regulated Navigation Area. (1) The following is a regulated navigation area (RNA): all waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.5 and mile marker 297.2.

(2) Regulations. (i) The general regulations contained in 33 CFR 165.13 apply.

(ii) Vessels that comply with the following restrictions are permitted to transit the RNA:

(A) Vessels must be greater than 20 feet in length.

(B) Vessels must not be a personal or human powered watercraft (*i.e.* jet skis, wave runners, kayaks, row boats, etc.).

(C) All up-bound and down-bound barge tows that consist of barges carrying flammable liquid cargos (Grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire

tow is clear of the RNA.

(D) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements.

(E) Commercial tows transiting the RNA must be made up with only wire rope to ensure electrical connectivity between all segments of the tow.

(F) All vessels are prohibited from loitering in the RNA.

(G) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA.

(H) Except for law enforcement and emergency response personnel, all personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device.

(I) Vessels may not moor or lay up on the right or left descending banks of the RNA.

(J) Towboats may not make or break tows if any portion

of the towboat or tow is located in the RNA.

(K) Persons on board any vessel transiting this RNA in accordance with this rule or otherwise are advised they do so at their own risk.

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DATED: June 19, 2013

M. N. Parks,  
Rear Admiral, U.S. Coast Guard  
Commander, Ninth Coast Guard District

[FR Doc. 2013-16803 Filed 07/12/2013 at 8:45 am;  
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